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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/626,180  | 07/23/2003  | Joseph E. Hoskeer    | JHD-001             | 1469             |
| 959   | 7590        | 06/01/2005           | EXAMINER            |                  |
| LAHIVE & COCKFIELD, LLP.<br>28 STATE STREET<br>BOSTON, MA 02109 |             |                      | STRIMBU, GREGORY J  |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3634                |                  |

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/626,180             | HOSKEER, JOSEPH E.  |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Gregory J. Strimbu     | 3634                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/23/03</u> . | 6) <input type="checkbox"/> Other: ____  |

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the screw drive and a chain drive must be shown or the features canceled from claim 11. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The description of the drawings is objected to because of each of figures 4A, 4B and 4C requires a separate description of what is shown in each figure.

Appropriate correction is required.

***Claim Objections***

Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Since the applicant is claiming the subcombination of a kit rather than the combination of a kit and a door opener comprising a trolley, limitations to the trolley fail to further limit the subcombination of the kit.

***Claim Rejections - 35 USC § 112***

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "conventional" on line 1 of claim 1 render the claims indefinite because it is unclear what comprises a conventional garage door opener since there are a myriad of different types of garage door openers. Recitations such as "a door opener" on line 2 of claim 1 render the claims indefinite because it is unclear if

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the applicant is referring to the garage door opener set forth above or is attempting to set forth another garage door opener in addition to the one set forth above. It is suggested that the applicant insert --a-- following "and" on line 10 of claim 1 to avoid confusion. Recitations such as "substantially opposite from the outwardly swinging door" on lines 5-6 of claim 9 render the claims indefinite because it is unclear what direction is opposite to the door. Recitations such as "with the outwardly swinging door at the second end" on lines 11-12 of claim 9 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a door opener or the combination of a door opener and a door. The preamble of claim 9 implies the subcombination while the positive recitation of the door on lines 11-12 implies the combination. Recitations such as "an increasing angle with the track" on line 16 of claim 9 render the claims indefinite because it is unclear what the applicant is attempting to set forth. What comprises an "increasing" angle? Is the applicant referring to an angle defined by the push bar and the track which increases in magnitude as the trolley moves toward the opening? Recitations such as "two outwardly swinging doors" on lines 1-2 of claim 19 render the claims indefinite because it is unclear if the applicant is including the door set forth above for a total of two doors or if the applicant is setting forth two doors in addition to the one set forth above for a total of three doors. Recitations such as "means" on line 4 of claim 20 render the claims indefinite because the applicant has attempted to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding or following "means," it is impossible to determine

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the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ainsworth. Ainsworth discloses a kit for converting a conventional garage door opener for a vertically sliding door to a door opener for opening an outwardly swinging door mounted for pivotal movement with substantially vertically aligned hinges disposed on one side of the outwardly swinging door such that the outwardly swinging door swings outwardly to reveal an opening, the conventional garage door opener having a motor operating a drive mechanism along a track for moving a movable trolley connectable to the vertically sliding door, the kit comprising: a trolley coupling 25 adapted to mount to the movable trolley D, D1; a door coupling 18 adapted to mount to the outwardly swinging door B; and at least one push bar 23 having a first end (not numbered, but shown in figure 2) and second end (not numbered, but shown in figure 2), wherein the push bar is adapted to pivotally couple at the first end with the trolley coupling and further adapted to pivotally couple at the second end with the door coupling such that the at least one push bar extends between the movable

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trolley and the outwardly swinging door to control the opening and closing of the outwardly swinging door in response to the drive mechanism moving the trolley along the track, a first trolley mechanism D, a second trolley mechanism D1, a second door coupling 18, first and second push bars 23, a stabilizer 1 which supports the push bars 23 via the track C and the trolley D, D1. It should be noted that since the applicant is only claiming a kit for use with an outwardly swinging door, Ainsworth anticipates the claimed invention because it is capable of being used with outwardly swinging doors.

Claims 9-13, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Burr. Burr discloses a door opener for opening an outwardly swinging door 28 mounted for pivotal movement with substantially vertically aligned hinges disposed on one side of the outwardly swinging door such that the door swings outwardly to reveal an opening, the door opener comprising: a track 14 disposed to extend inwardly in a direction substantially opposite from the outwardly swinging door; a trolley 12 slidably coupled with the track, such that the trolley can move along the track directionally generally toward the outwardly swinging door and away from the outwardly swinging door; at least one push bar 26 having a first end and second end, the push bar being pivotally coupled with the trolley at the first end and with the outwardly swinging door at the second end; wherein movement of the trolley along the track in a direction toward the outwardly swinging door causes the push bar to push the outwardly swinging door outwardly away from the trolley to reveal the opening while the push bar pivots forming an increasing angle with the track; and wherein movement of the trolley along the track

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in a direction away from the outwardly swinging door causes the push bar to pull the outwardly swinging door inwardly toward the trolley to conceal the opening while the push bar pivots forming a decreasing angle with the track, a screw mechanism (not shown, but see column 3, line 52), a first trolley mechanism 20 and a second trolley mechanism 18, a stabilizer bar 32.

Claims 9-12 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin. Martin discloses a door opener for opening an outwardly swinging door 11 mounted for pivotal movement with substantially vertically aligned hinges disposed on one side of the outwardly swinging door such that the door swings outwardly to reveal an opening, the door opener comprising: a track 23 disposed to extend inwardly in a direction substantially opposite from the outwardly swinging door; a trolley 25 slidably coupled with the track, such that the trolley can move along the track directionally generally toward the outwardly swinging door and away from the outwardly swinging door; at least one push bar 30 having a first end and second end, the push bar being pivotally coupled with the trolley at the first end and with the outwardly swinging door at the second end; wherein movement of the trolley along the track in a direction toward the outwardly swinging door causes the push bar to push the outwardly swinging door outwardly away from the trolley to reveal the opening while the push bar pivots forming an increasing angle with the track; and wherein movement of the trolley along the track in a direction away from the outwardly swinging door causes the push bar to pull the



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outwardly swinging door inwardly toward the trolley to conceal the opening while the push bar pivots forming a decreasing angle with the track, a screw drive 17, a motor 21.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ainsworth as applied to claims 1-5, 8, 18 and 19 above, and further in view of Perkins. Perkins discloses a push bar 10, 11 comprising an adjustment mechanism-12, 13 for adjusting a length of the push bar.

It would have been obvious to one of ordinary skill in the art to provide Ainsworth with an adjustment mechanism, as taught by Perkins, to more easily change the position the trolley with respect to the doors.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ainsworth as applied to claims 1-5, 8, 18 and 19 above, and further in view of Kortschot et al. Kortschot et al. discloses a push bar comprising at least one slip joint (not numbered, but shown in figure 5 comprising the connection between the two sections 6 and 10) coupled with a spring 12 for automatically adjusting the length of the push bar.

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It would have been obvious to one of ordinary skill in the art to provide Ainsworth with an adjustment means, as taught by Kortschot et al., to more easily change the position the trolley with respect to the doors.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burr as applied to claims 9-13, 17 and 20 above, and further in view of Perkins. Perkins discloses a push bar comprising an adjustment mechanism for adjusting a length of the push bar.

It would have been obvious to one of ordinary skill in the art to provide Burr with an adjustment mechanism, as taught by Perkins, to more easily change the position the trolley with respect to the doors.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burr as applied to claims 9-13, 17 and 20 above, and further in view of Kortschot et al. Kortschot et al. discloses a push bar comprising at least one slip joint (not numbered, but shown in figure 5 comprising the connection between the two sections 6 and 10) coupled with a spring 12 for automatically adjusting the length of the push bar.

It would have been obvious to one of ordinary skill in the art to provide Burr with an adjustment means, as taught by Kortschot et al., to more easily change the position the trolley with respect to the doors.

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Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martin as applied to claims 9-12 and 20 above, and further in view of Perkins. Perkins discloses a push bar 10, 11 comprising an adjustment mechanism 12, 13 for adjusting a length of the push bar.

It would have been obvious to one of ordinary skill in the art to provide Martin with an adjustment mechanism, as taught by Perkins, to more easily change the position the trolley with respect to the doors.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin as applied to claims 9-12 and 20 above, and further in view of Kortschot et al. Kortschot et al. discloses a push bar comprising at least one slip joint (not numbered, but shown in figure 5 comprising the connection between the two sections 6 and 10) coupled with a spring 12 for automatically adjusting the length of the push bar.

It would have been obvious to one of ordinary skill in the art to provide Martin with an adjustment means, as taught by Kortschot et al., to more easily change the position the trolley with respect to the doors.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ford, Hunter, Flewell, Rantz, Schneider, Ross, Robinson, Davis and Beeman are cited for disclosing a trolley push bar mechanism for opening and closing vertically hinged doors.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Business Center (EBC) at 866-217-9197 (toll-free).



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
May 26, 2005